



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

APR 09 2018

Ref: 8ENF-L

SENT ELECTRONICALLY AND VIA REGULAR MAIL

The Honorable Alvin Not Afraid, Jr., Chairman
Crow Tribe
P.O. Box 129
Crow Agency, Montana 59022

Mr. Cedric Black Eagle, Cabinet Head
Crow Tribe Water Resources Department
P.O. Box 520
Crow Agency, Montana 59022

Re: Warning Letter – Clean Water Act and National Pollutant Discharge Elimination System
Program Violations at the Crow Agency Wastewater Lagoon

Dear Chairman Not Afraid and Mr. Black Eagle:

As we discussed on March 22, 2018, the U.S. Environmental Protection Agency, Region 8 is preparing to issue the Crow Tribe (the Tribe) and the Crow Tribe Water Resources Department (Water Resources Department) an administrative compliance order pursuant to section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a), to address noncompliance with the CWA and National Pollutant Discharge Elimination System (NPDES) permit requirements at the Crow Agency wastewater lagoon (Lagoon). The Lagoon is owned by the Tribe and operated on behalf of the Tribe by the Apsaalooke Water and Wastewater Authority (AWWWA), a division of the Water Resources Department. As we also discussed, prior to issuance of the administrative order, the EPA will be issuing a request for information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, requesting historical and ongoing monitoring results of the Lagoon effluent.

The purpose of this letter is to formally notify you of the EPA's planned actions and strongly encourage you and representatives of the Water Resources Department to resolve the outstanding compliance items identified in the EPA's January 22, 2018 Lagoon inspection report, enclosed. It is to the advantage of the Tribe and the Water Resources Department to have addressed as many of the current violations as possible prior to the EPA's issuance of the administrative order.

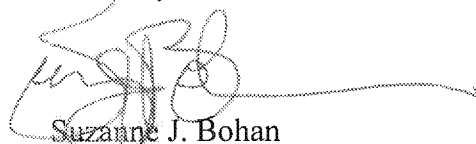
Between September 14, 2010 and September 14, 2015, the AWWWA was permitted to discharge from the Lagoon on behalf of the Tribe under the EPA's Region 8 NPDES General Permit for Wastewater Lagoons in Indian Country, NPDES Permit No. MTG589009 (the Permit). During this timeframe, EPA records indicate Discharge Monitoring Reports required by the Permit were deficient or not submitted for approximately 49 months. Since the Lagoon's Permit expired on September 14, 2015, the Lagoon has been operating without a permit for approximately 28 months.

On September 12, 2017, the EPA conducted an inspection of the Lagoon, which was discharging into the Little Bighorn River. Any discharge from the Lagoon to a water of the U.S. without a NPDES permit constitutes an unauthorized discharge of a pollutant in violation of section 301 of the CWA. The EPA's inspection also identified operation and maintenance deficiencies which could potentially result in public health and water quality concerns. Notably, the lagoon aeration and ultraviolet disinfection systems were not fully-functioning, potentially resulting in inadequate wastewater treatment. The report from the EPA's September 12, 2017, inspection was mailed to the Tribe and the AWWWA on January 22, 2018. As of our recent call, none of the findings identified in EPA's inspection report had been addressed.

As discussed, Amy Swanson of the EPA's Region 8 Legal Enforcement Program will contact Mr. Dennis Bear Dont Walk, Chief Executive Counsel of the Tribe, and Mr. Dion KILLSBACK, legal counsel for the Water Resources Department, to negotiate an Administrative Order on Consent (AOC), the preferred alternative to issuance of the order unilaterally. By negotiating an AOC, the EPA, the Tribe, and the Water Resources Department can ensure the ultimate success of the enforcement process by agreeing on the ordered action items and time allocated to perform them.

Please do not hesitate to write or call me at (303) 312-6925 if you have any questions about this letter or the EPA's process for dealing with noncompliance at tribal facilities. If your staff has questions, the most knowledgeable persons regarding these issues are Akash Johnson, NPDES Water Technical Enforcement Program, who may be reached at (303) 312-6067 or johnson.akash@epa.gov, and Amy Swanson, Enforcement Attorney, who may be reached at (303) 312-6906 or swanson.amy@epa.gov. Thank you for your attention to this important matter.

Sincerely,



Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Copy of EPA's January 22, 2018 Lagoon Inspection Report

cc (electronic):

Crow Tribe:
Melissa Walby, Chief of Staff, Chairman Not Afraid
Dennis Bear Dont Walk, Chief Executive Counsel
Connie Howe, Environmental Director

Crow Tribe Water Resources Department:
Tom Hall, Director, Municipal, Rural, and Industrial Program
Dion Killsback, Attorney
Tanner Black Eagle, Operator, AWWWA

Indian Health Service:
James Courtney, Environmental Engineer

Midwest Assistance Program:
Josh Jabalera, Consulting Operator



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JAN 22 2018

Ref: 8ENF-W-NP

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Connie Howe
Environmental Director
Crow Environmental Protection Program
P.O. Box 159
Crow Agency, Montana 59022

Gerald Pease
Cabinet Head
Apsaalooke Water and Wastewater Authority
1 Bacheeitché Avenue
Crow Agency, Montana 59022

Re: Inspection Report for Crow Agency and AWWA Wastewater Treatment Facility,
NPDES Permit No. MTG589009

Dear Ms. Howe and Mr. Pease:

On September 12, 2017, a representative of the U.S. Environmental Protection Agency (EPA) inspected the Crow Agency and Apsaalooke Water and Wastewater Authority Wastewater Treatment Facility. The inspection was conducted under the authority of Section 308 of the Clean Water Act to determine compliance with the facility's National Pollutant Discharge Elimination System permit. Enclosed is a report of the inspection.

Inspection findings are summarized within the enclosed report in a table titled "Findings, Corrective Actions and Recommendations." Within **thirty (30) days** of receipt of this report, please provide the EPA with a summary of corrective actions taken to address each of the findings identified in the report and any information that may change the findings. This summary should be sent to:

Michael Boeglin (8ENF-W-NP)
U.S. EPA Region 8
NPDES Enforcement Unit
1595 Wynkoop Street
Denver, CO 80202-1129

Please contact me at 303-312-6250 or boeglin.michael@epa.gov if you have any questions regarding this letter or the enclosed report.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Boeglin", with a stylized flourish at the end.

Michael Boeglin
NPDES Enforcement Unit
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

- 1) NPDES Inspection Report – Tribal Wastewater Lagoons
- 2) Photo Log

cc: Alvin Not Afraid, Jr., Chairman of Crow Tribe
James Courtney, Indian Health Service
Mr. Darryl LaCounte, Bureau of Indian Affairs

NPDES Inspection Report – Tribal Wastewater Lagoons

National Database Information	
Inspection Date: 9/12/2017	Inspection Type: Compliance Evaluation Inspection
Entry/Exit Time: 8:30 am / 2:10 pm	NPDES ID Number: MTG589009
NAICS Code: 221320	Inspection ID: 201709 MTG589009
Lead inspector and affiliation: Michael Boeglin, U.S. EPA Region 8	


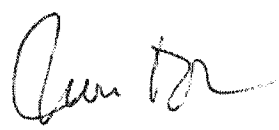

Facility Location Information (Name/Location/ Mailing Address)		
Site/Facility Name & Location: Crow Agency Wastewater Treatment Facility County Road 13A – River Road Crow Agency, Montana 59022	Mail Report to: <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> Connie Howe Environmental Director Crow Environmental Protection Program P.O. Box 159 Crow Agency, Montana 59022 </div> <div style="width: 35%;"> Gerald Pease Cabinet Head, Apsaalooke Water and Wastewater Authority 1 Bacheeitcha Avenue Crow Agency, MT 59022 </div> </div>	

Contact Information		
	Name(s)/Title	Telephone
Facility Contacts: <i>(indicate primary lead and present during inspection)</i>	Brewster Pretty on Top, Operator (present)	406-679-5049
	Tanner Black Eagle, Operator (present)	406-679-5049
Person/Company meeting definition of "Operator" per the permit type and relevant citation here	Apsaalooke Water and Wastewater Authority	
Tribe Representative(s)	Connie Howe, Environmental Director (not present for site inspection)	406-679-2736
Indian Health Service Representative(s)	James Courtney, Environmental Engineer (present)	406-247-7094

Permit Information		
Is the permit on site and available? No	Lagoon Category: Discharging	Monitoring Frequency: Monthly
Effective Date: 9/15/2010	Expiration Date: 9/14/2015	Is the Facility under a compliance schedule? No
Is correct contact information indicated on ICIS? No		Indicate correct contact information: See above for Connie Howe, Brewster Pretty On Top, and Tanner Black Eagle
Receiving Water(s): Little Bighorn River		
Discharge point location (latitude, longitude): 45°36'50.184" N / 107°27'21.258" W (based on field GPS)		
Regulatory Inspector's source of information: Permit, operator, prior inspections, ICIS, inspection site walk		

Areas Evaluated During Inspection

<u>Permit</u>	<u>Effluent/Receiving Waters</u>	
<u>Records/Reports</u>		
<u>Facility Site Review</u>	<u>Self-Monitoring Program</u>	

Report Review and Signature		
Drafter Signature/Name	Address/Phone Number	Date
	U.S. EPA Region 8 1595 Wynkoop Street 8ENF-W-NP Denver, Colorado 80202	1/19/2018
Michael Boeglin	303-312-6250	
Reviewer Signature/Name	Address/Phone Number	Date
	U.S. EPA Region 8 1595 Wynkoop Street 8ENF-W-NP Denver, Colorado 80202	1/22/18
Monia Ben-Khaled	303-312-6209	
Reviewer Signature/Name	Address/Phone Number	Date
	U.S. EPA Region 8 1595 Wynkoop Street 8ENF-W-NP Denver, Colorado 80202	1/19/2018
Akash Johnson	303-312-6067	

Inspection Narrative and Site Description

At approximately 8:30 am on Tuesday, September 12, 2017, I (EPA inspector Michael Boeglin) met with Indian Health Service representative James Courtney and Crow Tribe representatives Connie Howe, Brewster Pretty on Top and Tanner Black Eagle at the Crow Tribe's offices to discuss the timing of the inspection at the Crow Agency / Apsaalooke Water and Wastewater Authority lagoon wastewater treatment facility ("the facility" or "WWTF"). I described the purpose and procedure of the inspection and agreed to meet tribal representatives at the facility after lunch. The EPA's intent to conduct this inspection had been transmitted to Chairman Alvin Not Afraid, Jr., Crow Tribe Chairman, via a notification letter dated August 28, 2017.

During the visit to the Crow Tribe's office, I asked Ms. Howe questions about recordkeeping practices for the facility. She explained that the tribal government underwent a change of administration recently, at which time outgoing leaders left very few records for the incoming leaders. Ms. Howe explained that the Crow Tribe did not have any monitoring, correspondence or operations and maintenance records for me to review for any period of the past.

I joined Messrs. Courtney, Pretty on Top and Black Eagle at the WWTF at 1:10 pm on the same day to conduct a facility review. To guide the course of the inspection, I used a checklist with questions based on the terms and conditions of the applicable National Pollutant Discharge Elimination System (NPDES) permit. I began by reviewing the main lift station (photos 30 and 31) adjacent to the lagoons and asked Mr. Pretty on Top and Mr. Black Eagle ("the operators") questions about their operations and maintenance practices both at the two lift stations and at the lagoons. I did not review the second lift station, which was a booster station near the tribe's water resources building.

The operators then escorted me and Mr. Courtney through a tour of the facility's four lagoons (photos 32-35), the blower building (photo 36), the UV treatment building (photos 37-39), and the location of the outfall into the Little Bighorn River (photo 40). Wastewater enters cell 1 of the lagoon system via the main lift station and then runs via gravity through the subsequent three cells in series. The operators explained that splitter valves can be opened and closed to change the course of wastewater through the four cells if needed. They also explained that the lagoons are served by four blower motors, two of which operate at any given time to deliver pressurized air to approximately 85 aerators distributed across the four cells, with the number of aerators per cell decreasing as the wastewater passes through the four cells. According to the operators, cell 1 has 40 aerators, cell 2 has 35, cell 3 has 6, and cell 4 has 4 aerators.

The operators stated that the facility does not generally accept hauled waste, although it did accept hauled waste during the Crow Fair during the summer of 2017. I observed the facility to be surrounded by a chain-link fence. The operators stated that they had not yet obtained operator certifications but were working to complete certification requirements.

The facility's electrical service is delivered by Power Service of Montana, according to the operators. In the event of an outage, the wastewater treatment facility is served by a back-up diesel generator. The main lift station has an audible and visible alarm that would be activated if a float in the wet well reaches its highest allowable level. The operators explained that they drive past the facility five times daily to check the status of the lift station alarm. They walk the facility to check its operational status every other day.

After viewing the outfall with the operators and Mr. Courtney, I concluded the inspection by summarizing my preliminary findings for Mr. Pretty on Top and Mr. Black Eagle. I exited the facility at 2:10 pm.

Findings, Corrective Actions and Recommendations

Finding #1: The facility was operating and discharging without coverage by an NPDES permit.

Based on EPA records, the facility had coverage under the 2010 NPDES Lagoon General Permit for discharges from wastewater treatment lagoons ("the Lagoon General Permit") until September 14, 2015. On this date, the term of permit coverage expired because the permittee did not submit an application to the EPA to maintain coverage under the next issuance of the Lagoon General Permit, which was reissued January 1, 2016. At the time of the inspection, the facility was operating and discharging without NPDES authorization.

Permit Requirements:

Part 2.2 of the Lagoon General Permit states the following:

2.2.1. Facilities that had coverage under the previous general permit that this permit replaces are required to submit a complete NOI within 90 days after the effective date of this permit if they want to maintain coverage under the general permit.

Corrective Action:

Submit to the EPA an application, also called a Notice of Intent (NOI) to Discharge under the NPDES Lagoon General Permit (number MTG589xxx). The appropriate application form can be found online at <https://www.epa.gov/sites/production/files/2015-09/documents/final2a.pdf>

Finding #2: Several components of the wastewater treatment facility were not operating properly and had not been maintained.

The UV treatment system was not operating as designed and had not been maintained.

- The UV treatment trough in the UV treatment building had a total of 48 UV bulbs that were designed to deliver 41 mW/cm² of intensity to the passing wastewater for disinfection, according to the operators. However, the sensors and/or control panel display for monitoring effective UV intensity delivered by the bulbs were not operational (photo 36). The bulbs were functioning to some extent at the time of the inspection, but without an operational intensity monitor, the maintenance status and condition of the bulbs could not be fully assessed. The operators explained that the sensors had not been measuring intensity for at least two months without any repairs.

Two of the four blower motors in the blower building serving the lagoons were not in service.

- The operators explained that two of the four blower motors used to aerate the four cells of the WWTF have been out of commission since at least March. With only two operational blowers remaining, the facility has no back-up aeration capacity in the event that one or both of the active blowers need to be pulled out of service for maintenance. Without maintaining the facility's back-up capacity, the facility was not being operated and maintained according to design specifications.

The control panel for the blower motors had a malfunctioning display that did not show any data about the blowers (photo 39).

- The cause of the malfunctioning display was not apparent. Without a working display, the operators were unable to assess parameters characterizing the operational status of the blowers.

Recommended Action:

The EPA recommends the facility to maintain its lagoon system and all treatment components, including blowers, UV bulbs and control panel displays, according to the facility's O&M manual and good engineering practices to ensure wastewater is treated to meet the effluent limitations specified in the Lagoon General Permit.

Finding #3: The facility has not submitted any Discharge Monitoring Reports to the EPA for at least five years.

A review of discharge self-monitoring data for this facility in the EPA's Integrated Compliance Information System (ICIS) showed that the facility has not submitted any DMRs to the EPA for at least five years leading up to the date of the inspection. The operators explained during the inspection that the Bureau of Indian Affairs samples the facility's effluent on a quarterly basis but that the tribe never sees the results of any of this data. The tribe does not conduct its own sampling or analysis, according to the operators.

Recommended Action:

The EPA recommends the facility to begin sampling on a monthly basis in accordance with the terms of the facility's previous coverage under the Lagoon General Permit. Upon receipt of an effective permit authorization, the facility must sample in accordance with the monthly or quarterly frequency specified in its permit, as appropriate based on the terms of the authorization.

Finding #4: Inspections of the facility were not being recorded.

The operators explained during the inspection that they walk the entire facility every other day but do not record these inspections in any type of written form.

Recommended Action:

The EPA recommends that the facility's operators maintain a notebook of routine inspections documenting the following information:

- Name of facility and permit number;
- Date and time of the inspection;
- Name of the inspector(s);
- The facility's discharge status;
- The flow rate of the discharge;
- Whether there is any leakage through the dikes;

- Whether there are any animal burrows in the dike;
- Whether there has been any erosion of the dikes (e.g., rills, cracks or other structural indications of erosion);
- The presence of any rooted plants, including weeds growing in the water;
- Whether any vegetation growth on the dikes needs mowing (e.g. greater than 6" tall);
- List the date scheduled for operation and maintenance procedures to be undertaken at the wastewater treatment facility;
- Identification of operational problems and/or maintenance problems;
- Recommendations, as appropriate, to remedy identified problems;
- A brief description of any actions taken with regard to problems identified; and,
- Other information, as appropriate.

Please indicate in a report to the EPA whether the facility intends to implement this recommendation, which corresponds to a requirement of the Lagoon General Permit.



Photographs for 201709_MTG589009 Crow Agency Wastewater

Inspection Type: Tribal Wastewater

Photo number 30 taken by Michael Boeglin on 9/12/2017.

Description:

View inside the headworks lift station

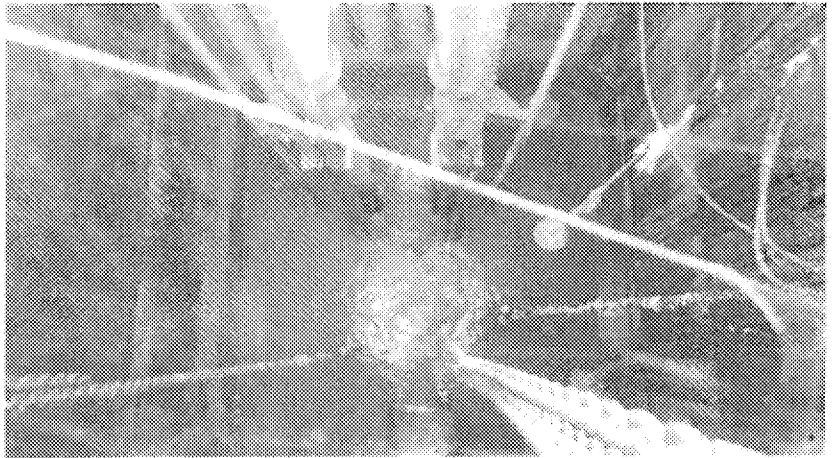
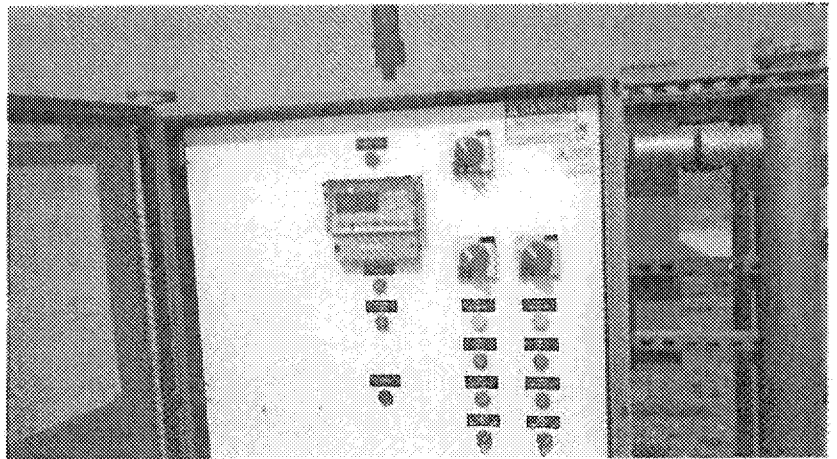


Photo number 31 taken by Michael Boeglin on 9/12/2017.

Description:

Control and alarm panel for the headworks lift station





Photographs for 201709_MTG589009 Crow Agency Wastewater

Inspection Type: Tribal Wastewater

Photo number 32 taken by Michael Boeglin on 9/12/2017.

The direction of the photo is SE.

Description:

Cell 1 of the lagoon system

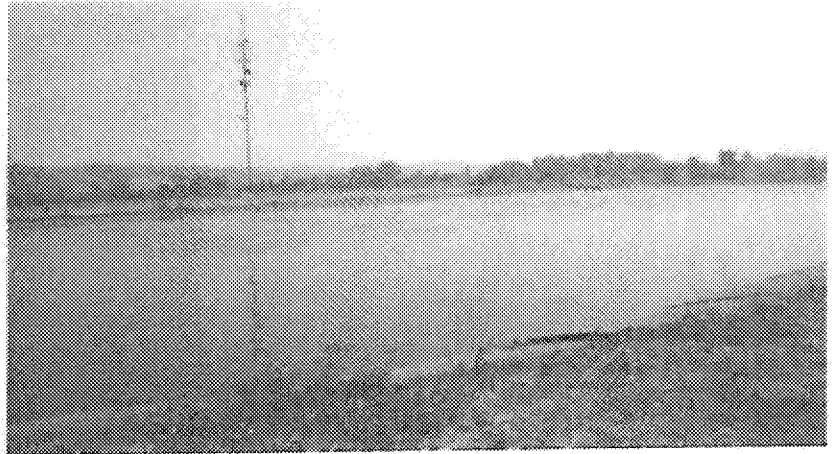
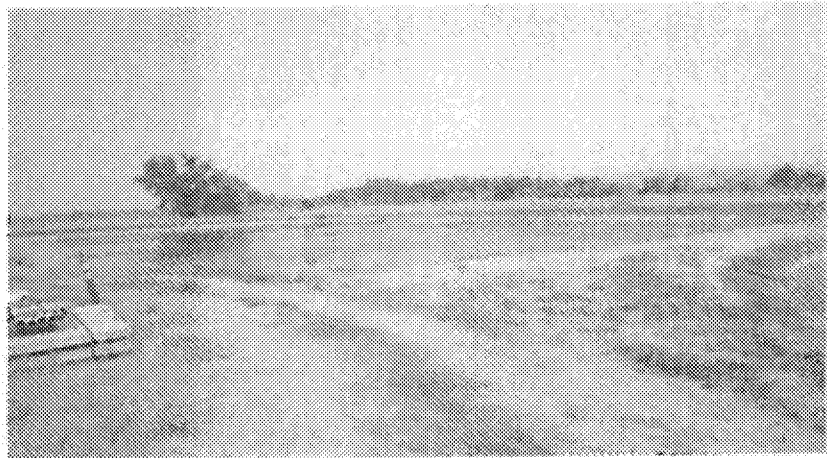


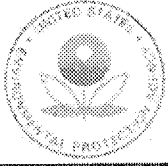
Photo number 33 taken by Michael Boeglin on 9/12/2017.

The direction of the photo is NE.

Description:

Cell 4 of the lagoon system





Photographs for 201709_MTG589009 Crow Agency Wastewater

Inspection Type: Tribal Wastewater

Photo number 34 taken by Michael Boeglin on 9/12/2017.

The direction of the photo is S.

Description:

Cell 2 of the lagoon system

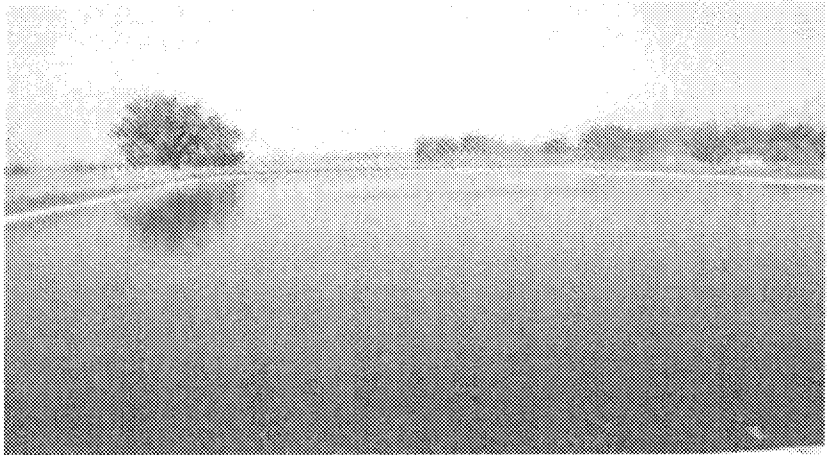


Photo number 35 taken by Michael Boeglin on 9/12/2017.

The direction of the photo is N.

Description:

Cell 3 of the lagoon system





Photographs for 201709_MTG589009 Crow Agency Wastewater

Inspection Type: Tribal Wastewater

Photo number 36 taken by Michael Boeglin on 9/12/2017.

Description:

UV meter for monitoring operation of the ultraviolet bulbs inside the UV building

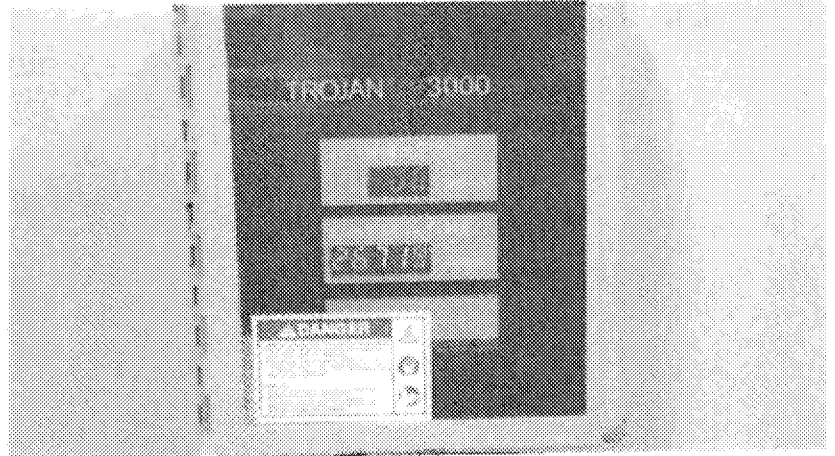
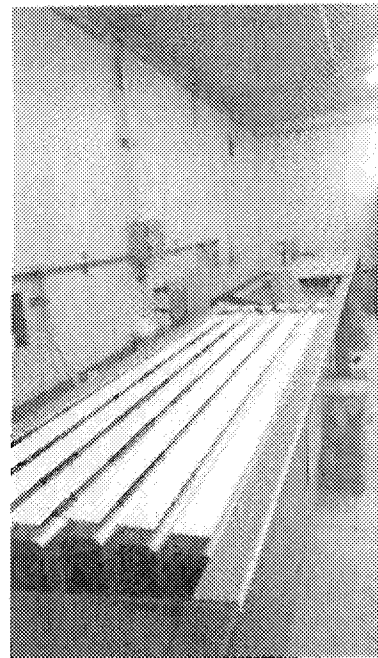


Photo number 37 taken by Michael Boeglin on 9/12/2017.

Description:

UV treatment trough through which wastewater flows prior to discharge





Photographs for 201709_MTG589009 Crow Agency Wastewater

Inspection Type: Tribal Wastewater

Photo number 38 taken by Michael Boeglin on 9/12/2017.

Description:

Sampling point at end of the UV trough prior to discharge

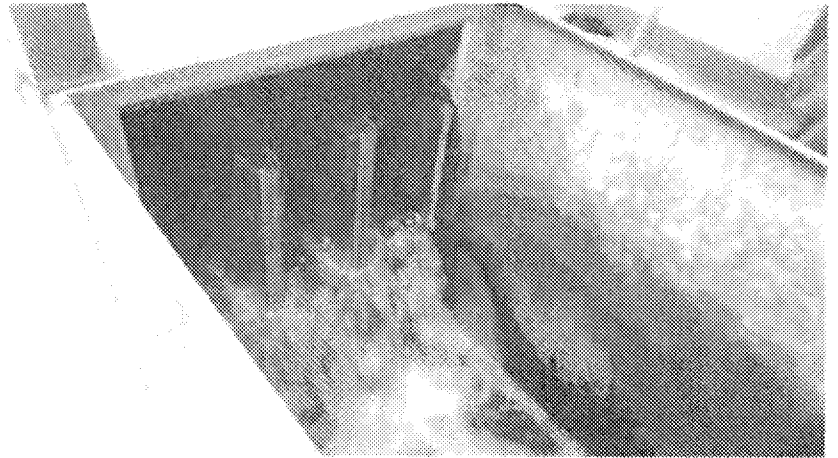
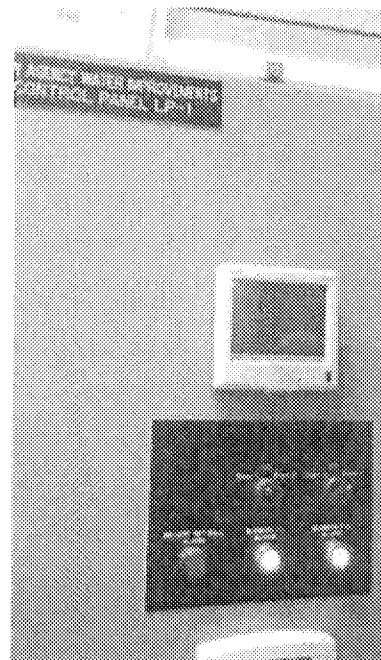


Photo number 39 taken by Michael Boeglin on 9/12/2017.

Description:

Power controls for the lagoons' four blowers. Note that the control panel interfaces were not operating.





Photographs for 201709_MTG589009 Crow Agency Wastewater

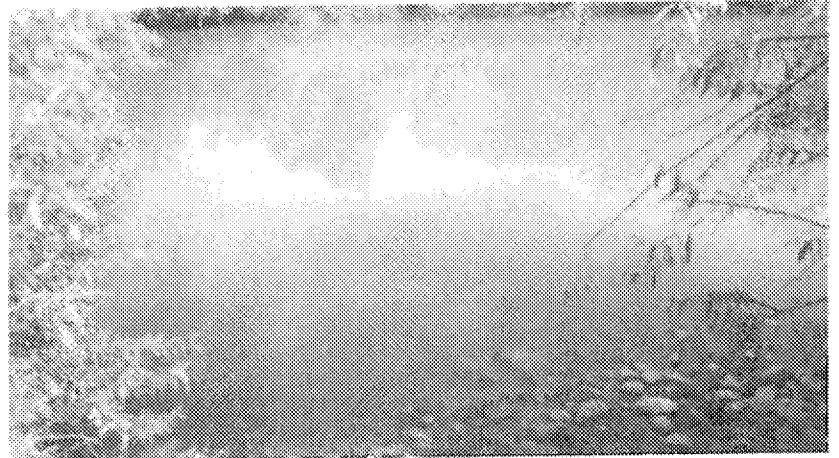
Inspection Type: Tribal Wastewater

Photo number 40 taken by Michael Boeglin on 9/12/2017.

The direction of the photo is E.

Description:

Submerged outfall to the Little Bighorn River



ADDENDUM TO INSPECTION REPORT

Date: April 4, 2018

From: Akash Johnson, NPDES Inspector, NPDES Enforcement Unit, U.S. EPA, Region 8

Facility: Crow Agency Wastewater Lagoon

Facility Location: Crow Agency, Montana

Facility and/or Inspection Type: Tribal POTW (Discharging Lagoon)

Permit #: MTG589009 (expired)

Inspection ID: 201709_MTG589009

Subject: Addendum to EPA's January 22, 2018 Inspection Report for the September 12, 2017 NPDES inspection of the Crow Agency Wastewater Lagoon

Addendum:

The Corrective Action pursuant to Finding 1 in the subject inspection report erroneously instructs the facility to submit a NOI to re-apply for coverage under the lagoon general permit. According to new information received from the NPDES Permitting Group, the facility should submit a Form 1 and the relevant Form 2 to apply for permit coverage. Submission of these forms provides the NPDES Permitting Group with information necessary to determine whether the facility is eligible for coverage under the lagoon general permit or whether an individual permit will be required. Upon request, these application forms were recently provided to various members of the Tribal government, the Crow Tribe Water Resources Department, and the Apsaalooke Water and Wastewater Authority. The forms can be also accessed at the link below.

<https://www.epa.gov/npdes/npdes-application-forms>

VelRey Lozano, of the NPDES Permitting Group, is the best EPA point of contact for any questions regarding completion or submittal of these forms. She can be reached at lozano.velrey@epa.gov.

END OF ADDENDUM



Akash Johnson
NPDES Enforcement Unit
Office of Enforcement, Compliance
and Environmental Justice